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L. Zubow
Proc II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187153

DATE: November 30, 1975

MATTER OF: The Human Resources Company

DIGEST:

1. Selection of higher priced but significantly technically superior offer is not objectionable in view of evaluation criteria which gave equal weight to technical and price considerations and absence from record of any indication that proposal evaluation was unreasonable.
2. Agency request for and receipt of "clarification" of proposal, which made otherwise unacceptable proposal acceptable, constituted discussion, therefore necessitating discussions with all offerors submitting proposals within competitive range. However, it is not clear that protester should have been included in competitive range and CAO cannot conclude that discussions should have been held with protester.
3. Protester's contention that it should have been given special consideration in evaluation on basis of its in-state geographic location is without merit since evaluation factors did not provide for giving preference to in-state firm.
4. Allegation that contracting agency discriminated against protester because it is "small, female-owned firm" is not supported by record.

The Human Resources Company protests the award of a fixed-price contract to Instructional System Design (ISD) under request for proposals (RFP) YA-512-RFP6-47 issued by the Bureau of Land Management, Department of the Interior (Interior), on April 15, 1976. The solicitation invited proposals for an in-depth training needs analysis for fire fighters in the Alaska fire suppression program.

B-187153

Five proposals were received by May 5, 1976, the closing date for receipt of initial proposals, and were submitted to a technical proposal evaluation committee (Committee). The proposals were evaluated, and ISD was ranked first with a score of 125, HRC ranked third with a score of 101. Interior awarded a contract to ISD on June 16, 1976.

HRC contends that its proposal was technically superior and lower in price than ISD's and that award therefore should have been made to it. HRC further contends that Interior improperly conducted discussions only with ISD. In addition, HRC suggests that award should have been made to it rather than to an out of state firm, and that Interior discriminated against HRC because it is female owned.

The RFP provision setting forth the basis for award selection is as follows:

"If proposals within the competitive range are all determined to be acceptable technically, award of a contract may or may not be made to the proposer of the lowest price proposal in the group. The relative weights of technical criteria and price are equal. The right is reserved to award a contract on other than the lowest price basis if a higher price proposal is rated significantly higher than any other, and the higher quality performance is considered vital to a successful training needs analysis."

The price proposed by HRC was \$12,600, provided the Government furnish secretarial services estimated by HRC to cost \$600. ISD proposed price was \$14,992.60. However, the ISD proposal was regarded as technically superior. The Committee evaluated ISD's proposal as follows:

"We strongly recommend that award be given to 'Instructional System Design' providing that several significant questions be resolved.

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B-187153

"ISD is offering a unique proposal that appears to have significant long range benefits to the government and this puts them substantially above any other offeror. * * *

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"* * * We believe the system ISD proposes would give us an outstanding product here and, that the proposed use of the Air Force computer system would result in a much higher level, much more comprehensive and much more usable data processing system. * * *

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"The quality of the proposed job analysis and potential use of the Air Force Computer Systems are far superior to any other proposal. * * *"

On the other hand, the Committee's evaluation of HRC was:

"This firm rates significantly below the first two. Principal areas of deficiency are: Individual expertise; number of staff specialists; computer system design; and innovativeness of proposal. Likely, they would do a good job, but we do not feel they have the staff or experience to truly provide a 'high' level of 'in-depth' consulting. It is not dramatically above our own capabilities. We envision both a very high workload plus excessive need for coordination."

It is not the function of this Office to make independent evaluations of proposals to determine which offer should have been selected for award. Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195. The determination of the relative merit of technical proposals is the responsibility of the procuring activity concerned which must bear the major burden of any difficulties encountered because of defective analysis. UCE, Incorporated, B-186668, September 16, 1976, 76-2 CPD 249, and cases cited therein. Therefore, the procuring activity's determination will ordinarily be accepted by our Office unless it is clearly shown to be unreasonable. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44; RAI Research Corporation, B-184315, February 13, 1976, 76-1 CPD 99. Here HRC has not shown that the

B-187153

evaluation was arbitrary or otherwise unreasonable. Accordingly, in view of the RFP's award criteria, we see no basis to object to the selection of a higher priced but technically superior offeror.

With respect to the conduct of negotiations, the protest has merit. It is Interior's position that no discussions were held because of the need for an expeditious award. However, the record clearly shows that discussions were held with ISD.

The Committee concluded its narrative evaluation of ISD's proposal as follows:

"In summary, we believe it worthwhile--in view of the strength of ISD's Phase I proposal--to work with them to obtain more information and specifics relative to the final output. If they provide satisfactory answers, then there is no question (technically) as to how the contract should go. If they can't provide those answers to our satisfaction then there is an equally strong reason to reject them." (emphasis added.)

Subsequently, the contracting officer submitted a list of "specific items in the RFP we want clarified" to ISD. ISD submitted a written response that offered various alternatives and considerable detail and elaboration not offered in its initial proposal.

Whether discussions have been held is a matter to be determined upon the basis of the particular actions of the parties, and not merely the characterization thereof by the contracting officer. Food Science Associates, Inc., B-183054, April 30, 1975, 75-1 CPD 269. We have held that discussions occur if an offeror is afforded an opportunity to revise or modify its proposal, regardless of whether such opportunity results from action initiated by the Government or the offeror. 51 Comp. Gen. 479 (1972). Consequently, Interior's request for "clarification" and the submission by ISD of (1) a revised performance schedule, (2) the basis to determine the reliability and validity of a Pre-Employment Questionnaire, (3) the alternate use of "a keypunch system" for data input if optical scanning equipment were unavailable, (4) an alternate means to process job data, and (5) a detailed description of the project "end-product", without which ISD's proposal would have been unacceptable, constituted discussions.

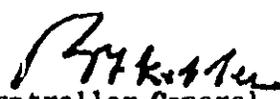
Federal Procurement Regulations (FPR) § 1-3.805-1(a) (1964 ed.) requires that, with certain exceptions, after receipt of initial proposals, written or oral discussions be conducted

with all responsible offerors who submit proposals within a competitive range, price and other factors considered. Although Interior may well have been able to invoke one of the exceptions and make award on the basis of initial proposals without holding discussions at all, see FPR § 1-3.805-1(a)(3), once it conducted discussions with one offeror, it was required to hold discussions with all offerors in the competitive range, 50 Comp. Gen. 202 (1970). Although Interior did not formally establish a competitive range, the record shows that the technical evaluators regarded ISD and another company as superior, HRC and another offeror as "significantly below" the other two, and a fifth firm as totally unacceptable. Under these circumstances, it appears that a competitive range determination properly would have had to include ISD and the second ranked offeror. It also might have included HRC in view of the preference for including doubtful proposals in the competitive range and attempting to resolve deficiencies in proposals through meaningful discussions. See Operations Research, Inc., 53 Comp. Gen. 860 (1974), 74-1 CPD 252, and 53 Comp. Gen. 523 (1974), 74-1 CPD 70; 51 Comp. Gen. 431 (1972). However, we cannot say that discussions should have been held with HRC, since the Committee narrative suggests that Interior could have established a competitive range consisting of only the two highest rated offerors.

Nonetheless, Interior clearly should have conducted discussions with the second ranked offeror. However, that firm has not protested the award. Furthermore, we understand that approximately 80 percent of the contract price has been expended. Under these circumstances, we do not feel that any useful purpose would be served by disturbing the award to ISD and reopening the procurement at this point. However, we are bringing this procurement deficiency to the attention of the Secretary of the Interior.

With regard to HRC's final contentions, the contracting officer reports that he was unaware that HRC was a small, female owned business until the allegation was made, and the record does not otherwise support HRC's allegation of discrimination. Moreover, there was no provision in the RFP for giving preference to an Alaskan firm, and it therefore would have been improper for Interior to have done so when evaluating proposals.

In accordance with the foregoing, the protest is denied.


Deputy Comptroller General
of the United States